



Ein cyf/Our ref ATISN 10362

Llywodraeth Cymru  
Welsh Government

23 May, 2016

Dear ,

**Request for Information – ATISN 10362**

I wrote to you on 18 April regarding your request for information. I am sorry for the delay in responding to you. You asked for a breakdown of money spent by the Welsh Government on the Circuit of Wales, as follows:

1. Cost of the independent legal and financial advice, estimated staff costs, public enquiry costs and any money paid directly to Circuit of Wales, including both past and present costs, when they were incurred and when they are due by.
2. Copies of reports by Pricewaterhouse Coopers LLP (PwC) and other independent reports / advice received or commissioned on the project.
3. How much of the money spent on Circuit of Wales has gone on salaries, specifically how much had been paid to the Heads of the Valley Development Company and Circuit of Wales, and whether the money is in forms of grants, loans or other finance.
4. Value of land on which the Circuit of Wales is proposed to be built.

I can confirm we hold some information relating to your request. For your first question, for the four years since the commencement of the project, a total of £393,000 has been incurred on legal and financial advice. I am unable to provide you with Welsh Government staff costs as it is not possible to disaggregate costs for any particular project. We similarly do not hold disaggregated, separate costs relating to the public enquiry. On payments to Circuit of Wales, a £2 million grant was paid to the Heads of the Valleys Development Company in 2012 and a £7 million loan guarantee was used to pay external subcontractors and advisors commissioned by the Heads of the Valleys Development Company to deliver financial close.



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and responding in Welsh will not lead to a delay in responding.

In relation to your second question, we hold a copy of the PwC report and other independent reports. However, I have concluded that they are all exempt from disclosure under Section 43(2) – Information prejudicial to commercial interest of the Freedom of Information Act 2000. Some of the information in one of the reports is also exempt under Section 42, Legal Professional Privilege. Full reasoning for applying these exemptions can be seen at Annex 1 of this letter.

We hold some information in relation to your third question. As explained above, a £2m grant was paid to Heads of the Valleys Development Company in 2012. Information as to how much of this was used to pay salaries is not held. See also my response to your first question.

For your fourth question, the value of land on which the Circuit of Wales is proposed to be built is also exempt from disclosure under Section 43(2). Please see Annex 1.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or  
[FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk).

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

## **Section 43 – Commercial Interest**

Decisions relating to non-disclosure have been taken with due consideration of the exemptions identified under Section 43(2) of the Freedom of Information Act 2000 (FOIA). This states that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it.

There is a public interest in openness and transparency within government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely. There is also public interest in knowing that organisations receive an appropriate level of support and the awarding of any financial support is done fairly and within the rules.

However, the reports you have requested in your first question contain substantive content which reflect the company's methodology and approach. This includes a considerable amount of commercially sensitive data relating to the project and the proposed business model of the circuit, including its commercial operating assumptions and business plan. Disclosure of this information is likely to be extremely damaging to the business of the circuit (not least in its negotiations with key customers and suppliers) and its ability to compete in the market for motor sport and non-motor sport events. Providing details of these reports would allow a commercial advantage to potential competitors were the information to be disclosed.

In relation to your fourth question, to release the land value at this stage of ongoing sensitive negotiations would likely prejudice the company's commercial interests as it is a key negotiating factor. Any premature release of commercially sensitive information would be likely to cause a negative commercial adjustment in the land value and or worth of the deal and harm the Circuit of Wales' commercial interests. The information relates to a deal that has yet to be concluded and which is still the subject of a number of conditions to be satisfied prior to prospective legal completion. It further contains detailed information relating to the company's negotiating position. Similarly, in the case of its other prospective investors, they would be party to information which would be likely to affect the timing and cost of services that they provide to the developer and therefore the respective negotiating positions of the parties concerned.

If the information were to be released, it would likely have a detrimental commercial effect upon those companies involved in the project because other prospective clients or competitors would have an indication of what the nominated suppliers may be prepared to accept in commercial or financial terms. The release of the information would, therefore, likely cause harm to the Circuit of Wales.

It is important to recognise that the transaction/project/commercial position is still the subject of a number of conditions to be satisfied and is not legally completed. I do not believe it would be in the wider public interest to release information which would likely

cause commercial prejudice to the company's efforts in developing this project (and therefore help businesses expand, develop and create jobs for the people of Wales).

If the conditions of the contract are satisfied and the transaction is completed, then the purchase price will be published by the Land Registry in due course which will provide the public with this key information that is contained within the contract.

Whilst it is recognised that, as a general rule, the sensitivity of information is likely to reduce over time, in this case the information captured is very much current information. The motorsports sector is highly competitive and commercial discussions are live between major event holders, circuit operators, tenants and motorsport brands. I have concluded, therefore, that whilst this information would be of interest to the company's competitors, I do not believe that it would be of interest to the wider public and I believe the balance of the public interest therefore falls in favour of withholding the information.

## **Section 42 – Legal Professional Privilege**

Some of the information contained in one of the reports under your first question provides legal advice. The Legal professional Privilege exemption states (*inter alia*):

*(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the "dominant" (main) purpose of litigation. The information in question concerns confidential communications made for the purpose of providing or obtaining legal advice or for lawyers to use in preparing a case for litigation.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in Bellamy v the Information Commission and DTI [EA/2005/0023] in which the tribunal, on the subject of LPP said:

*"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case....".*

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege.

Moreover, disclosure of legal advice has a significant potential to prejudice the government's ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour. To that end, the information has been withheld under s42(1) of the Freedom of Information Act.